

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.02.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.20167 of 2020  
and  
W.M.P.No.24910 of 2020  
(Heard through VC)

B.Gunaseelan

.. Petitioner

-vs-

The District Manager,  
TASMAC Ltd., Nagapattinam District,  
Industrial Estate, Thirubuvanam,  
Thiruvudaimarudhur Taluk,  
Nagapattinam - 612 001.

.. Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India to issue a Writ of Mandamus directing the respondent to pay the subsistence allowance to the petitioner and then pass final orders pursuant the suspension order dated 09.04.2020 at earliest.

For Petitioner : Mr.P.Suresh Babu

For Respondent : Mr.N.Damodaran

O R D E R

The petitioner has come forward with this writ petition, seeking a direction to the respondent to pay the subsistence allowance to him and then pass final orders pursuant the suspension order dated 09.04.2020.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

3. It is submitted by the learned counsel for the petitioner that the respondents are contemplating with the enquiry.

4. The learned counsel for the respondent would submit that there is a defalcation of more than a sum of Rupees Five lakhs by the petitioner and that the police case has also been registered against the petitioner.

5. In reply, the learned counsel for the petitioner submitted that the petitioner has availed an anticipatory bail from this Court. The petitioner had a benefit of anticipatory

bail, as according to him a false case has been foisted on him. This Court is not inclined to go into the various aspects based on which the charge has been framed against the petitioner. Though it has been contended by the learned counsel for the respondent that more than a sum of Rupees Five lakhs is payable by the petitioner, if it is established in the manner known to law, it is open to the respondent to recover the amount from the petitioner or from other persons jointly and severally.

6. When employees placed under suspension, it the duty of the employer to pay subsistence allowance and it is not a bar for the respondent to proceed with the departmental enquiry, even if the Criminal Case is pending and not concluded within a period of one year from the date of filing of the FIR.

7. Taking note of the averments of both the parties, it is open to the respondent to proceed against the petitioner departmentally, however, on payment of subsistence allowance due to the petitioner unless and otherwise the respondent is able to establish that the petitioner is deemed to be employed during the period of suspension. It is also not a bar for the respondent to consider the request of the petitioner to revoke the suspension in the light of the judgment of the Hon'ble Supreme Court in the recent decision in Ajay Kumar Choudhary vs. Union of India through its Secretary and another, reported in 2015 (7) SCC 291, and State of TN vs. Promod Kumar IPS and another, reported in AIR 2018 SC 4060, by posting him in a non-sensitive post, provided there are no legal impediments. It is needless to mention here that disposal of this writ petition will not preclude the respondents from issuing charge memo, if not already issued and after taking explanation, a domestic enquiry may be conducted and imposition of punishment may be awarded, if the charges are established. In similar circumstances, this Court has elaborately dealt with the issue in W.P.No.13 of 2021 (V.Mohanraj vs. The Secretary and two others), and passed a detailed order on 06.01.2021. For the sake of convenience, the relevant Paragraph Nos.6 to 10 are extracted hereunder:

"6. Considering the facts and circumstances of this case, this Court is not going to direct the respondents to promote the petitioner to the post of Inspector by including him in the panel and it is for the respondents to consider the same. It is needless to mention that if any departmental proceedings have been commenced or initiated, it is open to the respondents to proceed with the same so as to bring the proceedings to a logical end, dehors pendency of the criminal case, as both criminal proceedings as well as departmental proceedings can go on simultaneously and the criminal case should be proved beyond reasonable doubt by adducing oral and documentary evidence,

whereas charges in the departmental proceedings should be established on the basis of preponderance of probabilities. If Criminal Proceedings are not initiated or concluded within one year from the date of FIR, there is no hindrance on the part of the employer to proceed with the departmental proceedings on day to-day basis and bring the issue to a logical end at the earliest point of time and the employee will have to participate in the departmental proceedings and shall not attempt to adopt dilatory tactics.

7. In this regard, the Hon'ble Supreme Court in the case of Stanzen Toyotetsu India Private Limited vs. Girish v. and others, reported in (2014) 3 SCC 636, has clearly laid down a dictum as under:

"19. In the circumstances and taking into consideration all aspects mentioned above as also keeping in view the fact that all the three Courts below have exercised their discretion in favour of staying the on-going disciplinary proceedings, we do not consider it fit to vacate the said order straightaway. Interests of justice would, in our opinion, be sufficiently served if we direct the Court dealing with the criminal charges against the respondents to conclude the proceedings as expeditiously as possible but in any case within a period of one year from the date of this order. We hope and trust that the Trial Court will take effective steps to ensure that the witnesses are served, appear and are examined. The Court may for that purpose adjourn the case for no more than a fortnight every time an adjournment is necessary. We also expect the accused in the criminal case to co-operate with the trial Court for an early completion of the proceedings. We say so because experience has shown that trials often linger on for a long time on account of non-availability of the defense lawyers to cross-examine the witnesses or on account of adjournments sought by them on the flimsiest of the grounds. All that needs to be avoided. In case, however, the trial is not completed within the period of one year from the date of this order, despite the steps which the Trial Court has been directed to take the disciplinary

proceedings initiated against the respondents shall be resumed and concluded by the Inquiry Officer concerned. The impugned orders shall in that case stand vacated upon expiry of the period of one year from the date of the order.

20. In the result, we allow these appeals but only in part and to the extent indicated above. The parties are left to bear their own costs."

8. For the purpose of brevity, this Court makes it very clear that if any criminal proceedings have been initiated after commencement of the departmental proceedings, the one year time limit mentioned supra will not apply to those cases and the departmental proceedings shall go on uninterruptedly. Invariably, the offenders, who have committed grave offences, are being acquitted on the ground of benefit of doubt, owing to missing link in the chain of events and are trying to get back the entire backwages and for those persons, employment itself is a lottery.

9. In the present case on hand, even according to the petitioner, a charge memo has been issued as early as on 18.12.2015 and in case any departmental proceedings had already commenced, the same shall be proceeded on a day to-day basis without adjourning the matter beyond seven working days at any point of time and brought to a logical conclusion at the earliest. The petitioner shall co-operate for early attainment of the proceedings.

10. With the above observation, this writ petition is disposed of. No costs."

8. Accordingly, the writ petition is disposed of and the respondent shall take a decision in the light of the judgments of the Hon'ble Supreme Court and the judgment of this Court dated 06.01.2020 (especially Paragraph No.6). Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

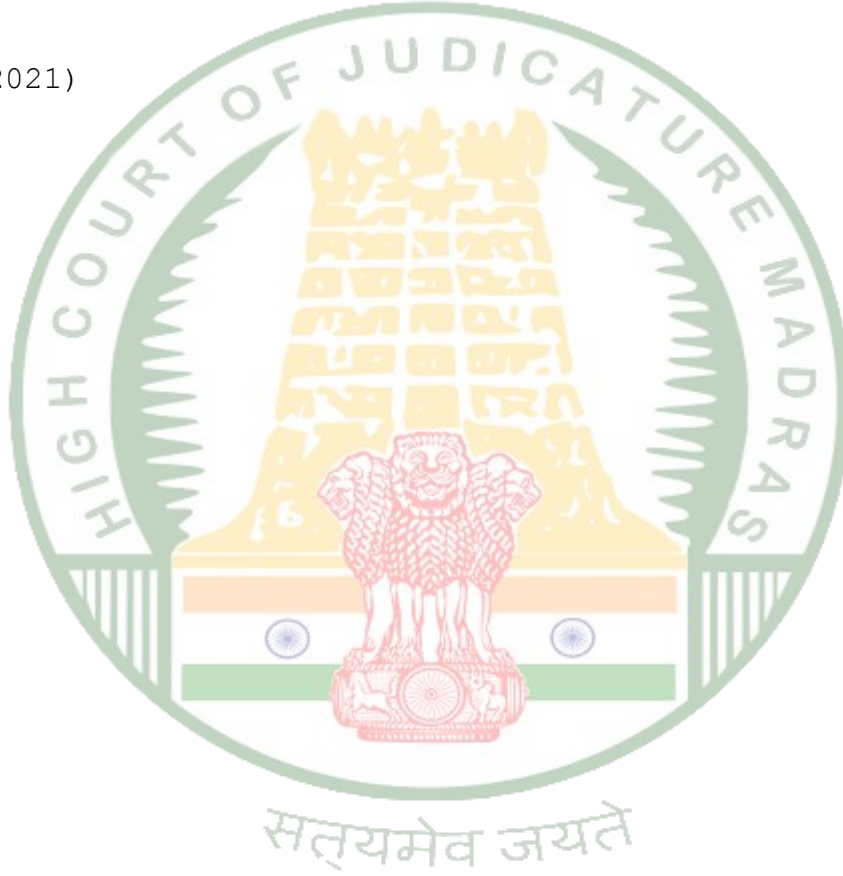
Rsi

To

1.The District Manager,  
TASMAC Ltd., Nagapattinam District,  
Industrial Estate, Thirubuvanam,  
Thiruvudaimarudhur Taluk,  
Nagapattinam - 612 001.

W.P.No.20167 of 2020  
and  
W.M.P.No.24910 of 2020

JP II(CO)  
GN(16/03/2021)



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